



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,312	01/09/2002	Dieter Boeckh	217473US0PCT	7460
22850	7590	03/08/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			MRUK, BRIAN P	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 03/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/019,312

Applicant(s)

BOECKH ET AL.

Examiner

Brian P Mruk

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed December 8, 2003. Applicant has amended claims 1 and 7-8. New claims 12-25 have been added. Currently, claims 1-25 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 8.
3. The rejection of claim 7 under 35 U.S.C. 112, second paragraph, and under 35 U.S.C. 101 is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claims 1-11 under 35 U.S.C. 102(b) as being anticipated by Langley et al, U.S. Patent No. 5,460,817, is maintained for the reasons of record.
5. The rejection of claims 1-11 under 35 U.S.C. 102(b) as being anticipated by Lykke et al, WO 97/24177, is withdrawn in view of applicant's amendments and remarks.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 112

Art Unit: 1751

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 24-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes that the instant specification does not provide support for the claimed subject matter in instant claims 24-25. Specifically, pages 7 and 9 do not provide support for "A method for pH-mediated release of an encapsulated material comprising exposing microcapsules to a pH of about 2 to 7 (claim 24) or 8 to 14 (claim 25). The recitation that the bonds are hydrolysable at these pH levels does not provide support the method that applicant is attempting to claim.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 18-19 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1751

10. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. In the present instance, claim 18 recites a broad recitation, followed by a preferred range that is narrower. Appropriate correction is required.

11. Claims 19 and 22 recite the limitation "R, R1 and R2 are as defined above" in the last line of each claim. There is insufficient antecedent basis for this limitation in the claim. Specifically, the examiner notes that the variables are not defined in claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 12-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Langley et al, U.S. Patent No. 5,460,817.

Art Unit: 1751

Langley et al, U.S. Patent No. 5,460,817, discloses a particulate composition comprising a core of matrix polymer with an active ingredient distributed therein, wherein the matrix polymer comprises an ethylenically unsaturated anionic monomer, such as methacrylic acid and acrylic acid, or a cationic monomer, such as dialkylaminoalkyl (meth)acrylate or amide acid (see abstract & col. 8, lines 2-40), per the requirements of the instant invention. It is further taught by Langley et al that the particles have an average size of 10 to 100 micrometers (see col. 13, lines 55-64), that the particulate composition is obtained by an oil-in-water polymerization (see col. 19, lines 62-67), and that the active ingredients includes perfumes, bleaching agents, enzymes, and detergents (see col. 11, line 67-col. 12, line 9 & col. 12, lines 34-55), per the requirements of the instant claims. Specifically, note Examples 1-16. Therefore, instant claims 12-23 are anticipated by Langley et al, U.S. Patent No. 5,460,817.

Response to Arguments

14. Applicant's arguments filed December 8, 2003 have been fully considered but they are not persuasive.

Applicant argues that Langley et al, U.S. Patent No. 5,460,817, does not have a "well-defined shell", as required in the instant claims. However, the examiner asserts that Langley et al clearly teaches that their composition is contained in an outer protection shell (see abstract of Langley et al), which clearly meets the "capsule shell" requirement of the instant invention. Applicant further argues that Langley et al does not teach the use of the anionic or cationic monomers in an amount of at least 10%, as

Art Unit: 1751

required in the instant claims. However, the examiner respectfully disagrees.

Specifically, Examples 7 and 11 of Langley et al disclose copolymers that clearly meet the newly required limitation of "at least 10%". Therefore, the examiner maintains that the instant claims are anticipated by Langley et al, U.S. Patent No. 5,460,817.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1751

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BM

Brian Mruk
March 2, 2004

Brian P. Mruk

Brian P. Mruk
Primary Examiner
Tech Center 1700